STATE OF MICHIGAN

COURT OF APPEALS

ANDREA BEAVER,

Plaintiff-Appellee,

v

COSMETIC DERMATOLOGY & VEIN CENTERS OF DOWNRIVER, P.C., and SCOTT FRIEDMAN, D.O.,

Defendants-Appellants.

UNPUBLISHED
August 16, 2005

No. 253568
Wayne Circuit Court
LC No. 03-336778-NZ

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendants appeal by leave granted from an order denying defendants' motion for summary disposition. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendants argue that the trial court erred in denying the motion for summary disposition where the matter should have been sent to arbitration. We agree. A motion for summary disposition pursuant to MCR 2.116(C)(7) is appropriate where "the claim is barred because of . . . an agreement to arbitrate." MCR 2.116(C)(7). All well-pleaded factual allegations and documentary evidence are construed in plaintiff's favor. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999). Where no factual or legal disputes exist and reasonable minds cannot differ on the legal effects of the facts, the decision regarding whether a plaintiff's claim is barred because of an agreement to arbitrate is a question of law that this Court reviews de novo. *Geralds v Munson Healthcare*, 259 Mich App 225, 230; 673 NW2d 792 (2003). The interpretation of contractual language is an issue of law that is reviewed de novo on appeal. *Morley v Auto Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

In this case the arbitration agreement reads:

> ARBITRATION OF EMPLOYMENT DISPUTES
>
> I hereby agree that any dispute that arises out of or that relates to employment with Cosmetic Dermatology & Vein Centers, P.C., or that arises out of or that is based on the employment relationship (including wage claim, any claim of

> wrongful termination, or any claim based on any employment discrimination or civil rights statute, regulation or law), shall be resolved by arbitration in accordance with the commercial rules of the American Arbitration Association by filing a claim in accordance with the filing rules of the American Arbitration Association, and judgment on the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

Defendants argue that plaintiff's tort claims are arbitrable under this agreement. "To ascertain the arbitrability of an issue, the court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Huntington Woods v Ajax Paving Industries, Inc*, 196 Mich App 71, 74-75; 492 NW2d 463 (1992). In this case, both plaintiff and defendants agree that there is an arbitration contract, but first dispute whether it is an applicable contract between plaintiff and defendant Friedman.

The use of arbitration "as an inexpensive and expeditious" method for resolving disputes is "strongly endorsed" by the law and public policy, and this Court will generally uphold valid arbitration agreements. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 127-133; 596 NW2d 208 (1999). The burden in an arbitration claim falls on the party challenging the arbitrability of a claim, and all doubts are to be resolved in favor of arbitration. *Id.* at 129. Nevertheless, '"a party cannot be required to arbitrate an issue which he has not agreed to submit to arbitration . . . [and] a party cannot be required to arbitrate when it is not legally or factually a party to the agreement."' *Hetrick v David A Friedman, DPM, PC*, 237 Mich App 264, 267; 602 NW2d 603 (1999).

In deciding whether the agreement, naming only CDVC, is also applicable to Friedman, a nonsignatory of the agreement, this Court notes that, "[n]onsignatories may be bound to an arbitration agreement under ordinary contract and agency principles." *Javitch v First Union Securities*, 315 F3d 619, 629 (CA 6, 2003). If plaintiff could avoid the natural consequences of the agreement to arbitrate by naming a nonsignatory party as a defendant, the effect of the arbitration agreement would effectively be nullified. See *Arnold v Arnold Corp--Printed Communications for Business*, 920 F2d 1269, 1281 (CA 6, 1990). There are five theories for binding nonsignatories to arbitration agreements that have been recognized: (1) incorporation by reference, (2) assumption, (3) agency, (4) veil-piercing/alter ego, and (5) estoppel. *Thomson-CSF v Am Arbitration Ass'n*, 64 F3d 773, 776 (CA 2, 1995). '"Agency' in its broadest sense includes every relation in which one person acts for or represents another by his authority." *Stratton-Cheeseman Management Co v Dep't of Treasury*, 159 Mich App 719, 726; 407 NW2d 398 (1987).

Friedman is the sole owner and doctor of CDVC, and his actions towards employees in a business setting, and concerning business matters, fall under the principal of agency. *Stratton-Cheeseman Management Co, supra*, p 726. In this case, the facts giving rise to this action occurred when Friedman disciplined plaintiff for her work performance while in the business setting by touching her against her will. Under an agency theory, Friedman's actions bind him to the arbitration agreement despite his nonsignatory status. *Javitch, supra*, p 629.

Second, it must be determined whether the dispute is arguably within the arbitration clause.

> Well-settled principles of contract interpretation require one to first look to a contract's plain language. If the plain language is clear, there can be only one reasonable interpretation of its meaning and, therefore, only one meaning the parties could reasonably expect to apply. If the language is ambiguous, longstanding principles of contract law require that the ambiguous provision be construed against the drafter. [*Singer v American States Ins*, 245 Mich App 370, 381 n 8; 631 NW2d 34 (2001).]

Although the arbitration clause begins very broadly, naming "any dispute that arises out of or that relates to employment," the arbitration clause also states that such disputes "shall be resolved by arbitration in accordance with the commercial rules of the American Arbitration Association." Plaintiff argues that the scope of the clause is limited to contractual disputes and that, therefore, her tort claims are not subject to arbitration because they are not contract claims.

Under the plain language of the contract, plaintiff's cause of action does arise out of her employment. *Singer, supra*, p 281 n 8. It has no bearing that the provision lists some of the possible claims. The inclusion of some claims in the list does not equate to the exclusion of all others where the plain language indicates that the list is not exclusive by using the term, "including." *Id*. The allegedly tortious conduct of defendants arose from Friedman disciplining plaintiff for her work performance while in the business setting by touching her against her will.

Further, there is nothing in the commercial rules of the American Arbitration Association that state that they only apply to commercial claims (Commercial Arbitration Rules and Mediation Procedures, found at: http://www.adr.org/sp.asp?id=22440, last accessed on July 1, 2004). Plaintiff has not provided any authority for her position. A party may not merely "announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Therefore, the dispute is arguably within the scope of the arbitration clause, which provides for the arbitration of disputes arising out of employment.

Finally, the dispute is not expressly exempted from arbitration by the plain language in the provision. *Huntington Woods, supra*, pp 74-75. Because any doubts are to be resolved in favor of arbitration, the trial court erred in denying defendants' motion for summary disposition. *Heurtebise v Reliable Bus Computers*, 452 Mich 405, 411; 550 NW2d 243 (1996); *Chippewa Valley Schools v Hill*, 62 Mich App 116; 233 NW2d 208 (1975).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens